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UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

CALIFORNIA

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

One Motorola Boost i415 Cellular Telephone
 Model Number H80XAH6RR1AN
 FCC ID Number AZ489FT5845

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

Case Number:

'08 MJ 81 12

I, Mario Vazquez being duly sworn depose and say:I am a(n) Special Agent with U. S. Immigration & Customs Enforcement and have reason to believe

Official Title

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

REFER TO ATTACHMENT A

in the SOUTHERN District of CALIFORNIA

there is now concealed a certain person or property, namely (describe the person or property to be seized)

REFER TO ATTACHMENT B

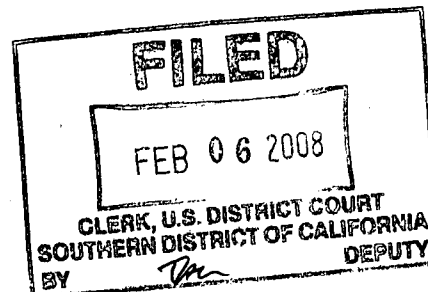
which is (state one or more bases for search and seizure set forth under Rule 41(c) of the Federal Rules of Criminal Procedure)

electronic data that constitutes evidence of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense.

concerning a violation of Title 21 United States code, Section(s) 841(a)(1), 846, 952 & 960

The facts to support a finding of probable cause are as follows:

REFER TO ATTACHED AFFIDAVIT OF ICE AGENT MARIO VAZQUEZ.



Continued on the attached sheet and made a part hereof:

☒ Yes☐ No

Signature of Affiant

Sworn to before me and subscribed in my presence,

2-6-08 @ 9:52 am

Date

at

EL CENTRO

CALIFORNIA

City

State

Peter C. Lewis

U.S. Magistrate Judge

Name of Judge

Title of Judge

Signature of Judge

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ATTACHMENT A

PROPERTY/ITEMS TO BE SEARCHED

The property/items to be searched are described as:

One Motorola Boost i415 Cellular Telephone, Model Number H80XAH6RR1AN,
FCC ID Number AZ489FT5845, presently in the custody of U. S. Immigration
and Customs Enforcement, 333 Waterman Avenue, El Centro, California.

ATTACHMENT B

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ITEMS TO BE SEIZED

One Motorola Boost i415 Cellular Telephone Model Number H80XAH6RR1AN ,
FCC ID Number AZ489FT5845, presently in the custody of U. S. Immigration & Customs
Enforcement, Resident Agent in Charge, El Centro, CA.

After U. S. Immigration & Customs officers gain access to the cellular telephone, the
cellular telephone will be searched for the following electronic data:

1. The phone numbers and/or direct connect and/or names and identities
assigned to the cellular phone; which constitutes evidence of the commission
of Title 21, United States Code, 952, 960, 841(a)(1) & 846;
2. Digital, cellular, and/or telephone numbers and/or direct connect numbers,
names and identities stored in the directories; which constitutes evidence of
the commission of Title 21, United States Code, 952, 960, 841(a)(1) & 846;
3. Phone numbers and direct connect numbers dialed from the cellular phone
and stored in memory; which constitutes evidence of the commission of Title
21, United States Code, 952, 960, 841(a)(1) & 846;
4. The last number dialed from the cellular phone; which constitutes evidence
of the commission of Title 21, United States Code, 952, 960, 841(a)(1) &
846;
5. Text messages and voicemail; which constitutes evidence of the commission
of Title 21, United States Code, 952, 960, 841(a)(1) & 846.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of:)	Magistrate Case No. _____
)	
One Motorola Boost i415 Cellular Telephone)	
Model Number H80XAH6RR1AN)	
FCC ID Number AZ489FT5845)	
)	
One Motorola Camera/Cellular Telephone)	
FCC ID Number IHDT56EU1)	
)	
One Nokia Cellular Telephone)	
Model Number 1600)	AFFIDAVIT OF ICE SPECIAL AGENT
Serial Number 052599KN04QA)	MARIO VAZQUEZ IN SUPPORT OF
FCC ID Number QTLRH-65)	<u>SEARCH WARRANT APPLICATION</u>
_____)	

I, Mario Vazquez, being first duly sworn, hereby depose and say:

PURPOSE

1. This affidavit is made in support of an application for a search warrant for federal agents to search the following three cellular telephones for electronic data that constitutes evidence of the commission of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense: (1) One Motorola Boost i415 Cellular Telephone identified by Model Number H80XAH6RR1AN, FCC ID Number AZ489FT5845; (2) One Motorola Camera /Cellular Telephone identified by FCC ID Number IHDT56EU1; (3) One Nokia Cellular Telephone identified by Model Number 1600, Serial Number 052599KN04Q4, FCC ID Number QTLRH-65.

BACKGROUND AND EXPERTISE

2. I am a Special Agent with the Department of Homeland Security, United States Immigration and Customs Enforcement, and have been so employed since March 2003. Prior to the

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creation of the United States Department of Homeland Security, the United States Immigration and Naturalization Service employed me as a Special Agent from July 1997 to February 2003. I have received training in identifying various controlled substances and the conduct of controlled substances (Title 21) investigations. I have spoken with other agents with extensive experience in controlled substances investigations.

3. I am currently assigned to the ICE, Office of the Assistant Special Agent in Charge (ASAC), Office of Investigations, Calexico, California. I am assigned to conduct investigations of criminal violations relating to the smuggling and transportation of controlled substances. I have personally arrested or participated in the arrest of several persons for violations of the Controlled Substances Act. In each of these cases, I have conducted interviews with the arrested persons and with their associates. Through these interviews, I have gained a working knowledge and insight into the typical working of controlled substance traffickers and smugglers. I have also gained extensive information as to the normal operational habits of persons who make their living as controlled substance traffickers.

4. Through the course of my duties, I have talked with experienced controlled substances investigators about the activities of controlled substances traffickers and I have received on the job training dealing with the activities of controlled substances traffickers practiced locally. I am aware that it is a common practice for controlled substances traffickers to use cellular telephones, pagers and portable radios to maintain communications with co-conspirators to further their criminal activities. I have made numerous arrests for violations of Title 21 of the United States Code, and am familiar with the identification of all types of controlled substances by sight and color.

5. The preparation of this affidavit is based upon facts known to me through my investigation or told to me by others involved in the investigation of this matter.

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6. This affidavit is made in support of an application for a search warrant to search three cellular telephones that are believed to contain evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841(a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code, Section 846, attempt and conspiracy.

7. This affidavit does not contain all of the information known to federal agents regarding this investigation, but rather, contains only those facts believed to be necessary to establish probable cause.

8. Based upon my training and experience as a Special Agent, consultations with other Special Agents and law enforcement officers experienced in drug trafficking investigations and all the facts and opinions set forth in this affidavit, I submit the following:

a. Drug traffickers will use cellular phones because they are mobile and they have instant access to phone calls and voice messages;

b. Drug traffickers believe that cellular phones provide greater insulation and protection against court-ordered wiretaps and they believe in the inability of law enforcement personnel to simultaneously track the originating and destination phone numbers of calls placed to and from their cellular phones;

c. ICE agents will deliver the cellular phones to cellular phone forensic examiners at the SAC San Diego Forensics Group. These examiners may be able to determine the PIN, turn on the cellular phone, and retrieve data from the cellular phone. Unlike typical computers, cellular phones do not have hard drives and store information in volatile memory. Current technology does not

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provide solutions for imaging the data stored in cellular phone memory. Consequently, the phone will have to be powered up and turned on by a forensics examiner. The examination may be delayed due to the lack of the appropriate charging device. The examiner will need to manually examine the cellular phone and its functions and record their findings using digital photography. This process is time and labor intensive and, depending upon the workload of the few certified cellular phone forensic examiners available, may take weeks or longer.

SUMMARY OF INVESTIGATION / FACTS SUPPORTING PROBABLE CAUSE

9. On July 21, 2006, at approximately 1205 hours, José Humberto ACUNA Chavez attempted to enter the United States through the Calexico, CA East Port of Entry. ACUNA was the driver of a 2000 Ford Expedition bearing Baja California, Mexico license plates BDW2324.

10. At primary inspection lane number 9, CBP Officer Brown questioned ACUNA as to his citizenship for which he presented a valid Border Crossing Card (DSP-150). CBP Officer Brown also questioned ACUNA as to the ownership of the vehicle. ACUNA stated that he was the registered owner of the vehicle. CBP Officer BROWN noticed that ACUNA became extremely nervous during routine questioning and referred the vehicle driven by ACUNA to the vehicle secondary lot for a closer examination.

11. During secondary inspection, CBP Officer Zuniga also noticed that ACUNA became extremely nervous during routine questioning. In secondary inspection, a Customs & Border Protection Narcotic Detector Dog screened the vehicle driven by ACUNA. The Narcotic Detector Dog alerted to the front fenders of the vehicle indicating the presence of a narcotic odor emitting from the area.

12. ACUNA was escorted to the security office where a pat down was conducted.

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ACUNA was in possession of three (3) cell phones. (1) One Motorola Boost i415 Cellular Telephone identified by Model Number H80XAH6RR1AN, and FCC ID Number AZ489FT5845; (2) One Motorola Camera /Cellular Telephone identified by FCC ID Number 1HDT56EU1; (3) One Nokia Cellular Telephone identified by Model Number 1600, Serial Number 052599KN04Q4, and FCC ID Number QTLRH-65.

13. A subsequent search of the vehicle revealed a total of 25 packages wrapped in brown postal tape, concealed within a specially built compartment within the two front fenders and firewall of the vehicle. Officer Zuniga probed one of the packages, revealing a white powdery substance. A presumptive field test of the substance gave a positive indication for cocaine. The 25 packages had a combined weight of approximately 26.82 kilograms (59.00 pounds).

14. United States Immigration and Customs Enforcement Special Agents Mario Vazquez and Cristina Gauthreaux were notified of the findings, and responded. ACUNA was placed under arrest and advised of his Miranda rights, which he acknowledged and invoked. All questioning of ACUNA ceased at that time.

15. On July 23, 2007, a criminal complaint was filed in the Southern District of California alleging that ACUNA imported 26.82 kilograms (59.00 pounds) of cocaine into the United States in violation of Title 21, United States Code. On August 1, 2007, a Federal Grand Jury in the Southern District of California in San Diego, California alleging the same indicted ACUNA.

DESCRIPTION OF PROPERTY / ITEMS TO BE SEARCHED

16. (1) One Motorola Boost i415 Cellular Telephone identified by Model Number H80XAH6RR1AN, and FCC ID Number AZ489FT5845; (2) One Motorola Camera /Cellular Telephone identified by FCC ID Number 1HDT56EU1; (3) One Nokia Cellular Telephone

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identified by Model Number 1600, Serial Number 052599KN04Q4, FCC ID Number QTLRH-65.

DESCRIPTION OF PROPERTY / ITEMS TO BE SEIZED

17. The items to be seized from each cellular phone are electronic data that constitute evidence of the commission of a criminal offense, and electronic data which is and has been used as the means for committing a criminal offense. The specific criminal offenses involved are violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841(a)(1), possession of a controlled substance with intent to distribute, and Title 21, United States Code, Section 846, attempt and conspiracy. The items to be seized include the electronic data described below:

- a. The phone numbers and/or direct connect and/or names and identities assigned to the cellular phones;
- b. Digital, digital/cellular, and/or telephone numbers and/or direct connect numbers, names and identities stored in the directories;
- c. Phone numbers and direct connect numbers dialed from the cellular phones and stored in memory;
- d. The last number dialed from the cellular phone and;
- e. Any other electronic information in the stored memory of the cellular phone, including text messages and voicemail, relating to violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841(a)(1), possession of a controlled substance with intent to distribute, and Title 21, United States Code, Section 846, attempt and conspiracy.

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CONCLUSION

18. Based on the facts contained in this affidavit and my experience and training, I submit that there is probable cause to believe that the three cellular phones listed above contain evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841(a)(1), possession of a controlled substance with intent to distribute, and Title 21, United States Code, Section 846, attempt and conspiracy. Further, I believe that the above-described property/items to be seized will be found when this warrant is served and based on the above-listed probable cause; I specifically request authority to seize the items described above and in Attachment B hereto (which is incorporated by reference herein). Therefore, for the reasons set forth in this affidavit and application, I respectfully request that a separate search warrant be issued for each cellular phone.

19. Therefore, your affiant respectfully requests a warrant be issued authorizing your affined, a Special Agent of ICE, or a Special Agent of ICE specially trained in digital evidence recovery, to search the items described in Attachment A, and seize the items listed in Attachment B.

20. I, or any other duly authorized federal agent, will personally serve the warrants requested above, and will be assisted by other duly authorized federal investigators.

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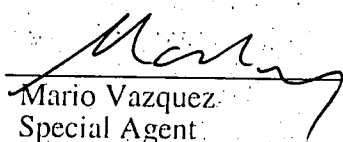
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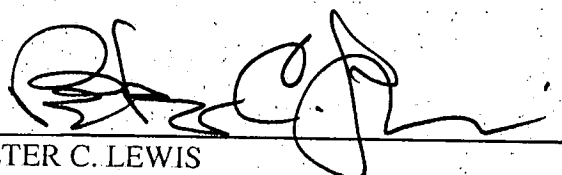
21. I also respectfully request that this Court issue an order pursuant to which this application of the United States and all papers submitted in support of the application be filed under seal. The evidence to be seized and the information upon which the application is based are relevant to an ongoing investigation and premature disclosure of this affidavit and related documents may have a negative impact on this investigation and jeopardize its effectiveness.

22. I have prepared this affidavit in close consultation with several federal agents with whom I work and Assistant U.S. Attorney Nicole Jones in the Southern District of California.

I swear the foregoing is true and correct to the best of my knowledge and belief.


Mario Vazquez
Special Agent
U. S. Immigration and Customs Enforcement

Subscribed and Sworn to before me this 6th day of February, 2008


PETER C. LEWIS
United States Magistrate Judge